

**WORKMAN | NYDEGGER** A PROFESSIONAL CORPORATION

Sterling A. Brennan (Utah State Bar No. 10060; E-mail: sbrennan@wnlaw.com)

David R. Wright (Utah State Bar No. 5164; E-mail: dwright@wnlaw.com)

Kirk R. Harris (Utah State Bar No. 10221; E-mail: kharris@wnlaw.com)

Cara J. Baldwin (Utah State Bar No. 11863; E-mail: cbaldwin@wnlaw.com)

1000 Eagle Gate Tower

60 E. South Temple

Salt Lake City, Utah 84111

Telephone: (801) 533-9800

Facsimile: (801) 328-1707

**MORRISON & FOERSTER LLP**Michael A. Jacobs (Admitted *Pro Hac Vice*; E-mail: mjacobs@mofo.com)Eric M. Acker (Admitted *Pro Hac Vice*; E-mail: eacker@mofo.com)Grant L. Kim (Admitted *Pro Hac Vice*; E-Mail: gkim@mofo.com)

425 Market Street

San Francisco, California 94105-2482

Telephone: (415) 268-7000

Facsimile: (415) 268-7522

Attorneys for Defendant and Counterclaim-Plaintiff Novell, Inc.

**IN THE UNITED STATES DISTRICT COURT****DISTRICT OF UTAH, CENTRAL DIVISION**THE SCO GROUP, INC., a Delaware  
corporation,

Plaintiff,

vs.

NOVELL, INC., a Delaware corporation,

Defendant.

Case No. 2:04CV00139

**VERIFIED MEMORANDUM IN  
SUPPORT OF DEFENDANT  
NOVELL, INC.'S BILL OF COSTS**

Judge Ted Stewart

AND RELATED COUNTERCLAIMS.

I, STERLING A. BRENNAN, hereby provide this verification of bill of costs pursuant to 28 U.S.C. § 1924 and declare and state as follows:

1. I am a duly authorized attorney for the defendant Novell, Inc. (“Novell”) in the above-captioned matter. I have either direct or indirect personal knowledge of the facts set forth hereing. I declare and state under penalty of perjury of the laws of the United States (1) that each of the costs listed herein is allowed by law as a cost awarded a prevailing party in a civil case; (2) that each such item is correct and is stated accurately; (3) that each such item was necessarily incurred as a cost in the case; and (4) that the services for which fees have been charged were actually and necessarily performed.

2. Pursuant to Fed. R. Civ. P. 54(d)(1), “costs other than attorneys’ fees shall be allowed as of course to the prevailing party unless the court otherwise directs.” In the present case, Novell is the prevailing party, as evidenced by the Final Judgment (Dkt. No. 878) submitted herewith as Exhibit A. Novell, as the prevailing party, respectfully requests the Clerk of the Court tax The SCO Group, Inc. (“Plaintiffs”), total costs to Novell in the amount of \$315,501.19<sup>1</sup> as detailed below.

3. On or about December 10, 2008, Novell submitted a Bill of Costs (Docket No. 573) for costs incurred in connection with the judgment entered on November 20, 2008. Pursuant to this Court’s Order of April 22, 2009, Novell’s allowed costs of \$99,639.09 were included in the judgment (Docket No. 595).<sup>2</sup>

---

<sup>1</sup> This total cost reflects the Court’s previously allowed costs of \$99,639.09, in addition to the \$215,862.10 in costs sought in this memorandum.

<sup>2</sup> A true and correct copy of the Court’s Taxation of Costs is submitted herewith as Exhibit B.

4. The documentation supporting the Bill of Costs submitted as Docket No. 573 has not been resubmitted, as it is already a part of the record of the Court. However, those previously awarded costs are properly included in Novell's total costs.

5. Costs that may be taxed are specified in 28 U.S.C. § 1920. *Sorbo v. United Parcel Service*, 432 F.3d 1169, 1179 (10th Cir. 2005). These costs include:

- (1) Fees of the clerk and marshal;
- (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
- (5) Docket fees under section 1920 of this title;
- (6) Compensation of court appointed experts compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

6. The following costs were either incurred after December 10, 2008, or were inadvertently not included in the Bill of Costs filed on or about December 10, 2008.

7. The following costs were necessarily incurred and are taxable as costs under 28 U.S.C. § 1920(1):

| <b>Fees of the Clerk<sup>3</sup></b>          |                  |                |
|---|------------------|----------------|
|   | <b>Date Paid</b> | <b>Amount</b>  |
| Fee for requesting file from federal archives | 02/18/2010       | \$ 45.00       |
| <b>Fees of the Marshal</b>                    |                  |                |
| None  |                  |                |
| <b>Total fees under § 1920(1)</b>             |                  | <b>\$45.00</b> |

---

<sup>3</sup> True and correct copies of various documents evidencing payment of these costs are collected and submitted herewith as Exhibit C.

8. Each of the above-stated service fees was necessarily incurred to secure deposition testimony and obtain documentation from third party individuals and corporations.

9. The following costs were necessarily incurred and are taxable as costs under 28 U.S.C. § 1920(2):

| <b>Fees of the court reporter<sup>4</sup></b> |                               | <b>Deposition/Trial Date</b>   | <b>Amount</b> |
|---|-------------------------------|--|---------------|
| Depomax Merit Litigation Services             | Christine A. Botosan (Novell) | 02/05/2010   | \$ 530.00     |
| Depomax Merit Litigation Services             | Christine A. Botosan (Novell) | 02/05/2010   | \$ 717.95     |
| Depomax Merit Litigation Services             | Troy Keller (Novell)          | 03/22/2010   | \$ 969.60     |
| Depomax Merit Litigation Services             | Video Depositions             | 03/22/2010   | \$ 170.00     |
| Legalink, A Merrill Company                   | Video Depositions             | 06/24/2004   | \$ 75.70      |
| Patti Walker                                  | Transcript of Motion Hearing  | 02/25/2010   | \$ 220.99     |
| Depomax Reporting Services                    | Tor Braham (SCO)              | 3/24/2010  | \$ 201.90     |
| Kelly Brown Hicken, Court Reporter            | Trial Transcript              | 03/09/2010<br>03/15/2010<br>03/23/2010<br>03/25/2010                             | \$ 973.78     |
| Rebecca Janke, Court Reporter                 | Trial Transcript              | 03/15/2010<br>03/16/2010<br>03/17/2010<br>03/19/2010<br>03/22/2010<br>03/24/2010 | \$ 1,534.88   |

---

<sup>4</sup> True and correct copies of various documents evidencing payment of these costs are collected and submitted herewith as Exhibit D.



prevailing in the case. Novell was also using some of the transcripts reflected above in the preparation of additional filings and in preparation for making pre-trial disclosures and in preparation for trial.

11. Each deposition taken by Novell was determined at the time it was taken to be reasonably necessary to the litigation. Each transcript ordered by Novell for depositions taken by other parties was likewise determined by Novell at the time to be reasonably necessary to the litigation.

12. The following costs were necessarily incurred and are taxable as costs under 28 U.S.C. § 1920(3):

|  |  |                 |
|--|--|-----------------|
| <b>In-house printing services provided by counsel<sup>5</sup></b>  |  |                 |
| The fees incurred during pendency of case for counsel's in-house printing of papers necessarily obtained for use in the case (September 2009 through June 2010). |  | \$ 61.51        |
| <b>Total fees under § 1920(3)</b>  |  | <b>\$ 61.51</b> |

13. A listing of each in-house printing cost incurred for the period from September 10, 2009 through June 1, 2010 is shown in Exhibit 1 to the Affidavit of Jessica Garcia. In-house counsel's in-house copy rate was \$0.015 per page.

14. The following costs were necessarily incurred and are taxable as costs under 28 U.S.C. § 1920(4):

|                        |  |  |
|------------------------|--|--|
| <b>Fees for copies</b> |  |  |
|                        |  |  |

---

<sup>5</sup> A true and correct copy of an Affidavit of Jessica Garcia is attached, tabulating approximate costs associated with photocopying documents as necessary over the course of the case is submitted herewith as Exhibit E.

| <b>Commercial copy services<sup>6</sup></b>  |                         |               |
|--|-------------------------|---------------|
| <b>Payee</b>   | <b>Transaction Date</b> | <b>Amount</b> |
| Magna Legal Services LLC – Certified copies of Exhibits, Rough Disk, Shipping charges for Terry L. Musika deposition | 02/19/2010              | \$ 1,711.85   |
| Salt Lake Legal, LLC – trial exhibits  | 01/25/2010              | \$ 2,404.03   |
| Salt Lake Legal, LLC – mock trial DVDs   | 02/02/2010              | \$ 128.22     |
| Salt Lake Legal, LLC – depositions copied and bound for trial  | 03/08/2010              | \$ 22.17      |
| Salt Lake Legal, LLC – documents copied and collated into folders for use in trial                                   | 02/26/2010              | \$ 6,348.07   |
| Salt Lake Legal, LLC – documents copied for use in trial   | 02/25/2010              | \$ 2,745.84   |
| Salt Lake Legal, LLC – documents copied and bound for use in trial   | 03/15/2010              | \$ 35.45      |
| Salt Lake Legal, LLC – documents copied and bound for use in trial   | 03/09/2010              | \$ 1,433.05   |
| Salt Lake Legal, LLC – documents copied and bound for use in trial   | 03/09/2010              | \$ 8,734.03   |
| Salt Lake Legal, LLC – documents copied for use in trial   | 03/09/2010              | \$ 76.31      |
| Salt Lake Legal, LLC – documents copied and bound for use in trial   | 03/12/2010              | \$ 132.66     |
| Salt Lake Legal, LLC – documents copied and bound for use in trial   | 03/16/2010              | \$ 32.96      |
| Salt Lake Legal, LLC – documents copied and bound for use in trial   | 03/18/2010              | \$ 33.92      |
| Salt Lake Legal, LLC – documents copied for use in trial   | 03/19/2010              | \$ 322.54     |
| Salt Lake Legal, LLC – oversee mounting of exhibits for trial  | 03/19/2010              | \$ 307.73     |
| Salt Lake Legal, LLC – documents copied for use in trial   | 03/19/2010              | \$ 36.86      |
| IKON Office Solutions – documents copied, folders for trial  | 1/28/2010               | \$ 1,464.93   |
| Evolve Discovery, Gateway Acceptance Co. – Novell trial exhibits   | 2/16/2010               | \$ 3,056.25   |
| Evolve Discovery, Gateway Acceptance Co. – SCO trial exhibits  | 2/16/2010               | \$ 634.29     |

---

<sup>6</sup> True and correct copies of various documents evidencing payment of these costs are collected and submitted herewith as Exhibit F.

|  |           |                      |
|--|-----------|----------------------|
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/23/2010 | \$ 94.61             |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/23/2010 | \$ 431.82            |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/23/2010 | \$ 253.60            |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/23/2010 | \$ 11,409.90         |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/24/2010 | \$ 425.25            |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/24/2010 | \$ 94.61             |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/24/2010 | \$ 390.70            |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/25/2010 | \$ 105.20            |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/23/2010 | \$ 125.55            |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 2/25/2010 | \$ 245.21            |
| Fulcrum Legal Graphics – slide presentation graphics for use in mock trial     | 2/26/2010 | \$ 21,936.00         |
| Impact Trial Consulting LLC – trial presenter fees                             | 4/5/2010  | \$ 72,832.50         |
| Evolve Discovery, Gateway Acceptance Co. – SCO trial exhibits for use in trial | 3/1/2010  | \$ 520.59            |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 3/2/2010  | \$ 2,174.32          |
| Evolve Discovery, Gateway Acceptance Co. – SCO trial exhibits for use in trial | 3/3/2010  | \$ 3,123.05          |
| Evolve Discovery, Gateway Acceptance Co. – trial exhibits for use in trial     | 3/3/2010  | \$ 193.55            |
| Evolve Discovery, Gateway Acceptance Co. – documents copied for use in trial   | 3/3/2010  | \$ 172.69            |
| Fulcrum Legal Graphics – slide presentation graphics for trial                 | 3/22/2010 | \$ 15,657.50         |
| Trialgraphix – equipment rental for use at trial                               | 3/24/2010 | \$ 585.00            |
| Impact Trial Consulting LLC – graphics consultation                            | 4/13/2010 | \$ 8,583.25          |
| Fulcrum Legal Graphics – slide presentation graphics for trial                 | 4/26/2010 | \$ 8,485.00          |
| <b>Subtotal</b>  |           | <b>\$ 177,501.06</b> |



|  |  |                      |
|--|--|----------------------|
| <b>In-house copy services provided by counsel (Workman Nydegger)<sup>7</sup></b>   |  |                      |
| The fees incurred during pendency of case for counsel's in-house printing of papers necessarily obtained for use in the case (September 2009 through June 2010). |  | \$ 18,809.10         |
| <b>In-house copy services provided by counsel (Morrison Foerster)<sup>8</sup></b>  |  |                      |
| The fees incurred during pendency of case for counsel's in-house printing of papers necessarily obtained for use in the case (December 2009 through April 2010). |  | \$ 5,924.20          |
| <b>Total fees under § 1920(4)</b>  |  | <b>\$ 202,234.36</b> |

15. Each of the entries stated above reflects a charge incurred for exemplification and copying papers necessarily obtained for use in the case. 28 U.S.C. § 1920(4). A listing of each in-house copy cost incurred by Workman Nydegger for the period from September 10, 2009 through June 1, 2010 is shown in Exhibit 2 to the Affidavit of Jessica Garcia. In-house counsel's in-house copy rate was \$0.10 per page. The list in Exhibit 2 shows that all entries are copy costs (service code 908), that each was incurred in connection with this case (client/matter number 15923.14), the date of each copy job, the amount incurred in connection with each copy job, and that each copy amount was invoiced to Novell.

16. A listing of each in-house copy cost incurred by Morrison Foerster for the period from December 10, 2010 to April 19, 2010 is shown as Exhibit 3 to the Affidavit of Jessica Garcia. In-house counsel's in-house copy rate was \$0.20 per page for black and white copies and \$0.70 per page for color copies. The list in Exhibit 3 shows that all entries are copy costs,

---

<sup>7</sup> True and correct copies of various documents evidencing payment of these costs are collected and submitted herewith as Exhibit 2 to the Declaration of Jessica Garcia (Exh. E).

<sup>8</sup> True and correct copies of various documents evidencing payment of these costs are collected and submitted herewith as Exhibit 3 to the Declaration of Jessica Garcia (Exh. E).

that each was incurred in connection with this case, the date of each copy job, the amount incurred in connection with each copy job, and that each copy amount was invoiced to Morrison Foerster.

17. For some copy jobs, Novell used commercial services, as reflected in the list above. The costs shown above incurred in connection with commercial copy jobs were for various document productions and preparation of trial exhibits. Also included are costs associated with scanning and imaging of documents, because some documents were produced in this case by electronic form.

DATED: June 24, 2010

Respectfully submitted,

By:     /s/ Sterling A. Brennan      
WORKMAN NYDEGGER

MORRISON & FOERSTER LLP

Attorneys for Defendant and  
Counterclaim-Plaintiff Novell, Inc.